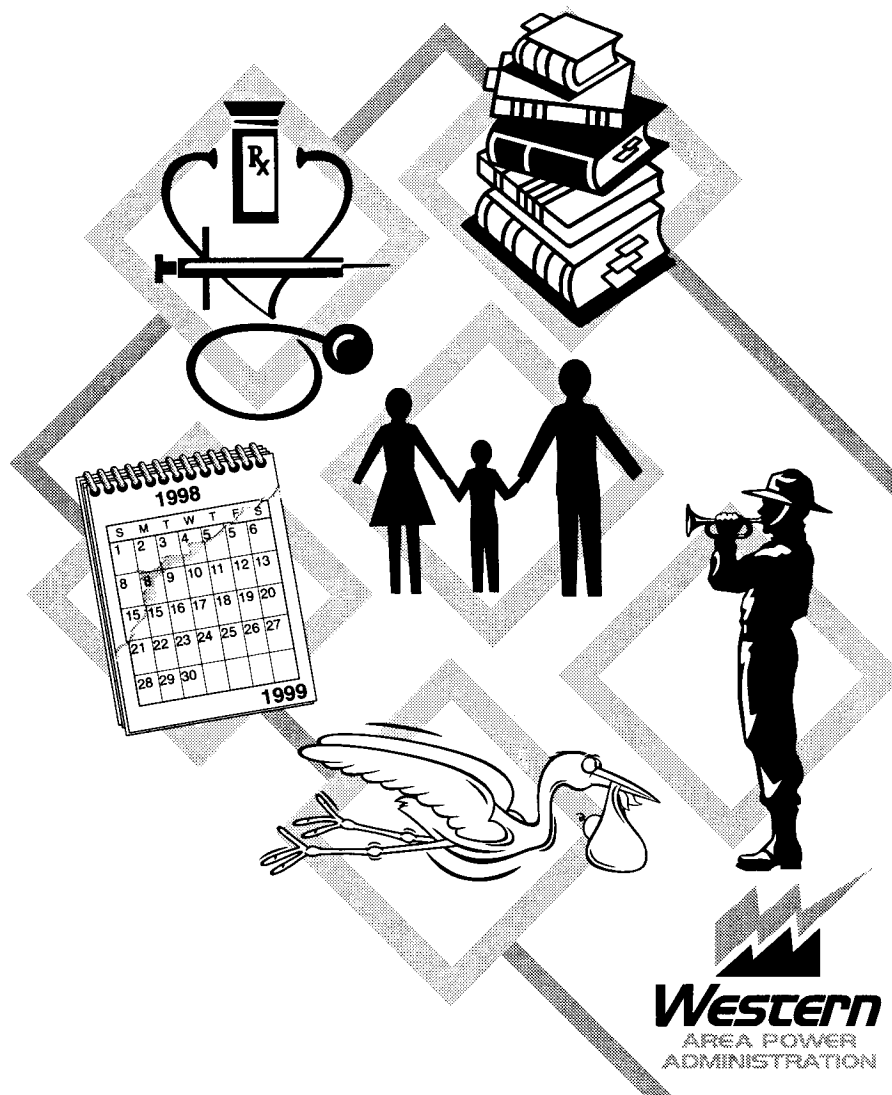


# ***A Guide to Leave Without Pay***



**Western**  
AREA POWER  
ADMINISTRATION

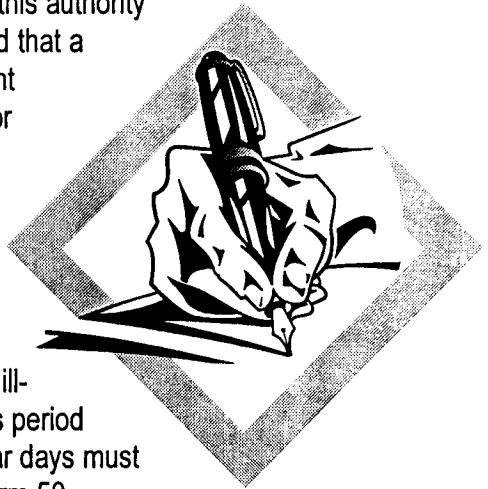


This guide was prepared to assist employees and supervisors in determining if Leave Without Pay is an appropriate option when requesting approval for an absence from duty. The information in this guide has been compiled from various laws and regulations as a handy reference for your convenience.

Leave Without Pay (LWOP) is a temporary absence from duty requested by an employee and approved by their supervisor. During a period of LWOP, the employee is in a nonpay and nonduty status.

## **Requesting LWOP**

Requests for LWOP are submitted by the employee on a Standard Form 71, Request for Leave or Approved Absence, for supervisory approval. LWOP of up to 4 calendar days may be approved by the employees immediate supervisor. Longer periods of LWOP, for up to 4, require approval at the senior management level, unless this authority is redelegated. It is recommended that a request for LWOP include sufficient information to assist the supervisor in determining if approval is appropriate.



## **Documenting LWOP**

LWOP of 80 hours or more granted because of an on-the-job illness or injury, and any continuous period of LWOP that exceeds 30 calendar days must be documented on a Standard Form 50, "Notification of Personnel Action." Supervisors should contact their servicing Human Resources office for assistance in documenting LWOP.

## **Approving LWOP**

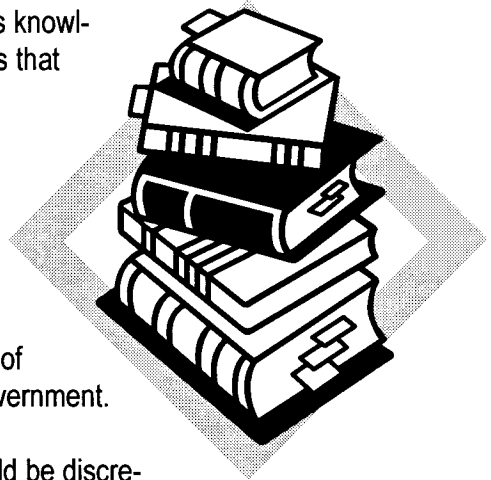
There are many reasons an employee may wish to request LWOP for

an absence. Depending on the circumstances of the request, supervisory approval may be discretionary or mandatory.

### **When Approval of LWOP is Discretionary**

DOE Order 322.1, PAY AND LEAVE ADMINISTRATION AND HOURS OF DUTY, provides that LWOP shall be granted when the value to the Department of Energy (DOE) or the needs of the employee are sufficient to offset the cost and administrative inconvenience that may result and when one of the following benefits is expected.

1. Protection or improvement of the employee's health.
2. Increase in the employee's knowledge, skills, and/or abilities that will benefit DOE.
3. Retention of an employee with a critical skill or in a shortage category occupation.
4. Furtherance of a program of interest to the Federal Government.



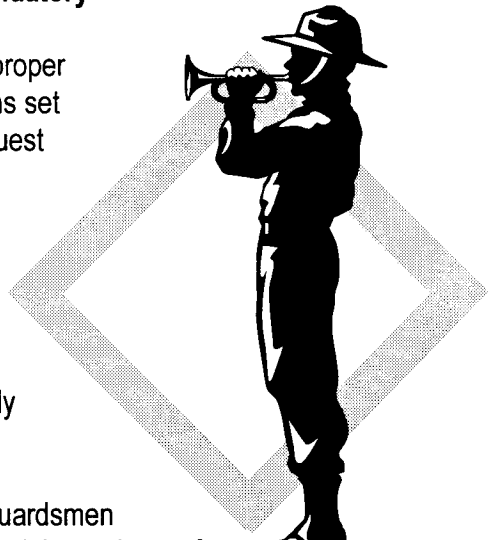
As an example, approval would be discretionary where an employee requests LWOP for a temporary assignment to a State or Local Government, Indian Tribal Government, institution of higher education, or other eligible organization. In this case, LWOP may be approved for up to two years.

If LWOP is approved for employees who represent recognized labor organizations, then LWOP used for this purpose must not exceed 104 weeks in any one period of five years.

## When Approval of LWOP is Mandatory

When an employee makes a proper request for LWOP under provisions set forth by law or regulation, the request must be approved. Approval for LWOP under the following situations is required.

1. Disabled veterans in need of medical treatment. (Executive Order 5396 [July 17, 1960])
2. Reservists and National Guardsmen ordered to active duty for training or law enforcement when other appropriate leave has been expended. (38 U.S.C. 2024 (d))
3. Employees with no accumulated leave who are required to be on LWOP pending approval of a disability retirement application.
4. Employees needing to retain cooperative education status when they return to school between periods of employment with DOE.
5. An employee's proper request under the Family and Medical Leave Act.
6. An employee's request for LWOP for a period of absence covered by workers' compensation.

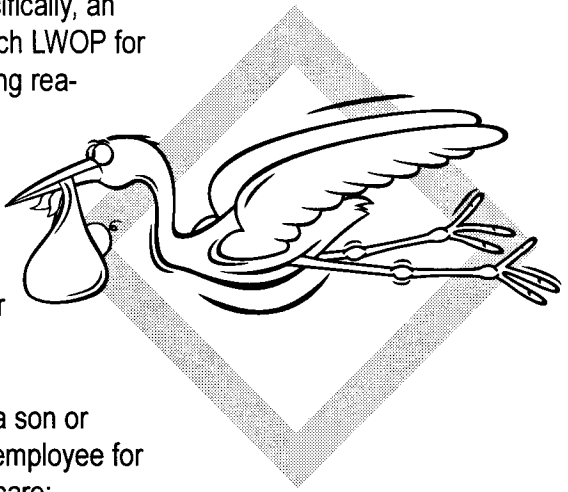


## Family and Medical Leave Act (FMLA) provisions (5 CFR Part 630, Subpart L)

Under the Family and Medical Leave Act of 1993, Federal employees may use a total of up to 12 workweeks of unpaid leave during any 12-

month period for certain family and medical needs. LWOP taken under these provisions is also referred to as Family and Medical Leave. Specifically, an employee is entitled to such LWOP for one of more of the following reasons:

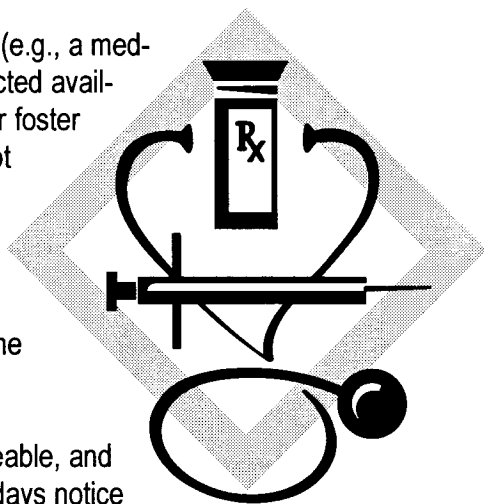
1. The birth of a son or daughter of the employee and the care of such son or daughter;
2. The placement of a son or daughter with the employee for adoption or foster care;
3. The care of a spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition; or
4. A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position.



**The FMLA provides that:**

- ◆ Employees shall take only the amount of FMLA leave that is necessary to manage the circumstance that prompted the need for leave.
- ◆ The 12-month period begins on the date the employee first takes leave under FMLA.
- ◆ The 12-week entitlement is prorated for employees with part-time work schedules.

- ◆ LWOP may only be taken intermittently if the employee and the agency agree to do so, or when medically necessary.
- ◆ To take LWOP for an expected birth, placement for adoption or foster care, or planned medical treatment, the employee shall provide notice to the agency of his or her intention to take leave not less than 30 days before the date the leave is to begin.
- ◆ If leave taken is foreseeable based on planned medical treatment, the employee shall consult with the agency and make a reasonable effort to schedule medical treatment so as not to disrupt unduly the operations of the agency, subject to the approval of the health care provider. The agency may, for justifiable cause, request that an employee reschedule medical treatment, subject to the approval of the health care provider.
- ◆ If the leave is not foreseeable (e.g., a medical emergency or the unexpected availability of a child for adoption or foster care) and the employee cannot provide 30 days notice of his or her need for leave, the employee shall provide notice within a reasonable period of time appropriate to the circumstances involved.
- ◆ If the need for leave is foreseeable, and the employee fails to give 30 days notice with no reasonable excuse for the notification delay, the agency may delay the taking of leave under these provisions until at least 30 days after the date the employee provides notice of his or her need for family and medical leave.
- ◆ When family and medical leave is taken due to a serious health condition of the employee, or appropriate family member, the employee shall provide written medical certification in a timely manner. This



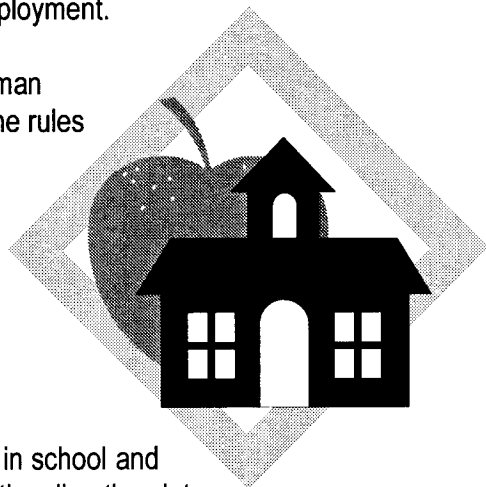
medical certification shall include:

1. The date the serious health condition commenced.
  2. The probable duration of the serious health condition.
  3. The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition, including a general statement as to the incapacitation, examination, or treatment that may be required by a health care provider.
  4. For leave taken to care for a family member—a statement that the family member requires psychological comfort and/or physical care; needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs or in making arrangements to meet such needs; and would benefit from the employee's care or presence; and a statement from the employee on the care he or she will provide and an estimate of the amount of time needed to care for his or her family member.
- ◆ Any employee who takes LWOP under these provisions shall be entitled, upon return to the agency, to be returned to the same position held by the employee when the leave commenced; or an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

Please contact your servicing Human Resources office for information on the rules for substituting paid leave for LWOP taken under these provisions.

On April 11, 1997, the President authorized employees to use an additional 24 hours of LWOP each year:

- ◆ to allow employees to participate in school and early childhood educational activities directly relat-



ed to the educational advancement of a child (e.g., parent-teacher conferences, meetings with child-care providers, volunteer activities supporting the child's educational advancement, etc.).

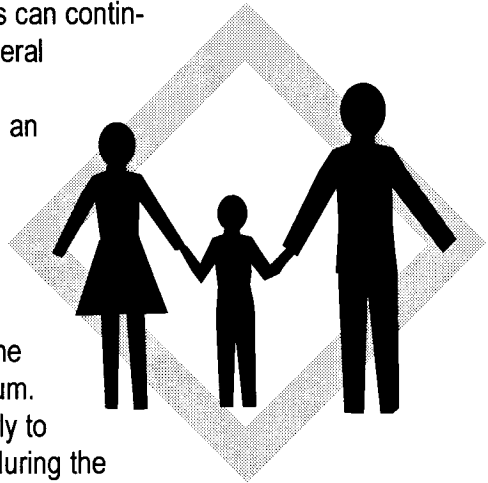
- ◆ to allow parents to accompany children to routine medical or dental appointments, such as annual checkups or vaccinations.<sup>1</sup>
- ◆ to allow employees to accompany an elderly relative to routine medical or dental appointments or other professional services related to the care of the elderly relative (e.g., making arrangements for housing, meals, phones, banking services, etc.).

## **Office of Worker's Compensation Programs Provisions**

If an employee is disabled due to personal injury or disease sustained while in the performance of duty, then the employee would be entitled to compensation benefits under the provisions of the Federal Employees Compensation Act. An employee's request for LWOP for a period of absence covered by workers' compensation must be approved, since an employee must be in an LWOP status before compensation for wage loss is payable.

## **How LWOP Impacts Employee Benefits**

**Health Benefits** – Employees can continue their enrollment in the Federal Employee's Health Benefits Program for up to one year in an LWOP status. The one year of LWOP may be continuous or broken by periods of less than four consecutive months in a pay status.<sup>2</sup> The employee is responsible for the employee share of the premium. Premiums may be paid directly to the agency each pay period during the period of LWOP or may be paid retroactively after the employee returns to duty. If paid





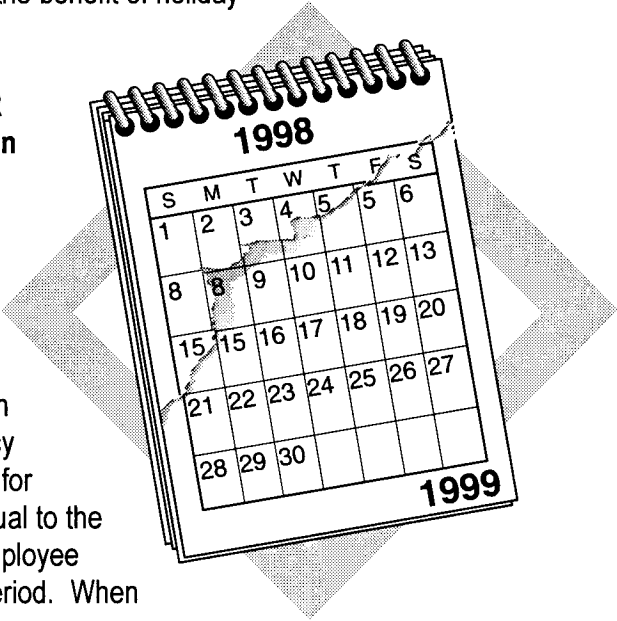
retroactively, payment is made through payroll deduction at the rate of one additional biweekly premium payment until the debt is paid. When an employee enters a period of LWOP where the employee's pay is insufficient to pay their health benefits premium, the agency shall provide them with written notification of their premium payment options.

When an employee has been in a nonpay status for more than 365 days their health insurance terminates. The 365 day period may be continuous or broken by periods of less than four consecutive months in pay status. If an employee has at least four consecutive months in a pay status he or she is entitled to a new period. If the employee later returns to a pay status, the employee shall register within 60 days after their return to pay status in order to continue health benefits coverage. The employee may elect coverage with any participating health carrier.

**Holiday Pay** – If an employee is in a LWOP status for both the workday before and the workday after a holiday, then the employee is not entitled to pay for the holiday. If the employee is in a pay status on the workday either before or following a holiday, then the employee is paid for the holiday. Periods of paid leave and LWOP shall not be alternated to obtain the benefit of holiday pay.

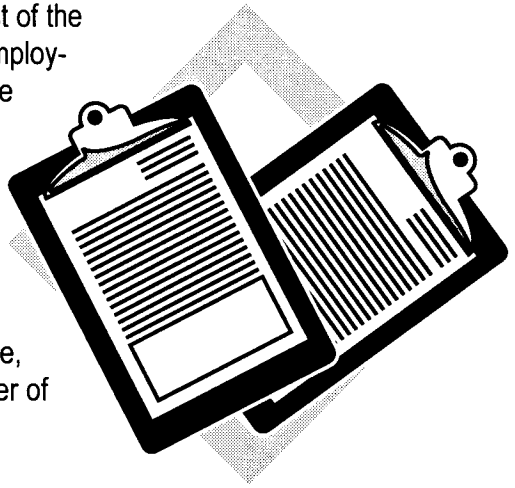
**Leave Accrual - 5 CFR 630.208(a) Reduction in leave credits.**

“When the number of hours in a nonpay status in a full-time employee's leave year equals the number of base pay hours in a pay period, the agency shall reduce his credits for leave by an amount equal to the amount of leave the employee earns during the pay period. When



the employee's number of hours of nonpay status does not require a reduction of leave credits, the agency shall drop those hours at the end of the employee's leave year. For the purpose of determining the reduction of leave credits under this paragraph when an employee has one or more breaks in service during a leave year, the agency shall include all hours in a nonpay status (other than nonpay status during a fractional pay period when no leave accrues) for each period of service during the leave year in which annual leave accrued."

**Life Insurance Benefits** – Basic Life Insurance coverage will continue for up to one year in an LWOP status at no cost to the employee. Optional coverage (i.e., Standard, Additional, and Family) stops at the end of the pay period in which an employee's pay is insufficient to cover the full cost of the optional insurance. Where an employee's Basic and Optional insurance have stopped due to LWOP, the insurance is automatically reinstated on the first day he or she actually enters on duty in a pay status in a position in which he or she again becomes eligible for life insurance coverage, unless the employee files a waiver of coverage.



**Retirement Credit** – Up to a total of six months of LWOP in a calendar year is still creditable for retirement. The six months of LWOP may be continuous or intermittent. There is no requirement to make a deposit to the retirement fund for the period of LWOP. Any LWOP that exceeds six months in the same calendar year changes the employee's Service Computation Date one day for each day exceeding six months. If the employee is on LWOP while performing military service or while receiving Workers' Compensation benefits, all service is creditable if the employee returns to duty after the period of separation.

**Thrift Savings Plan (TSP)** – During periods of LWOP where the employee's basic pay is insufficient to make the required contribution, then no contributions are made.<sup>3</sup> Employees in an LWOP status may make interfund transfers of their existing account balance and continue to have the same election opportunities during TSP Open Seasons.

### **TSP Loans**

- ◆ Employees on LWOP are not eligible to receive TSP loans until they return to a pay status. It is the employee's responsibility to notify their agency when they enter an LWOP status and have a TSP loan outstanding. The agency is responsible for notifying the TSP when an employee is placed in an LWOP status.
- ◆ If an employee who has a TSP loan is on LWOP for less than 90 days, the loan payment schedule will be extended.
- ◆ If an employee who has a TSP loan is on LWOP for more than 90 days, but less than one year, they must reamortize the loan when he or she returns to a pay status. If they fail to reamortize the loan, the loan must be prepaid in full or a taxable distribution will be declared.
- ◆ If an employee who has a TSP loan is on LWOP for more than one year, the employee must prepay the loan in full at the end of the first year in an LWOP status or be subject to taxable distribution of the unpaid loan principal and any accrued interest.

**Within-Grade Increases (WGI's)** – Excess time in an LWOP status delays eligibility for WGI's based on the length of the waiting period. For employees in a one year waiting period (i.e., going to steps 2, 3, or 4), any LWOP in excess of 80 hours during the waiting period delays eligibility for a WGI by an equal period of time. Employees in a two-year waiting period (i.e., going to steps 5, 6, or 7) are allowed up to 120 hours of LWOP during their waiting period, and employees in a three-year waiting period (i.e., going to steps 8, 9, or 10) are allowed up to 160 hours of LWOP during their waiting period.

If you have questions about your leave without pay options, please contact your servicing Human Resource office for assistance.



**Footnotes:**

<sup>1</sup> 5 CFR 630.401 does provide that employees may use up to 13 days of sick leave each year for such purposes. The 24 hours of LWOP is in addition to the leave provided by regulation.

<sup>2</sup> For an employee who is employed under an OPM approved career-related work-study program that is of at least one year in duration, his or her enrollment continues while in a nonpay status so long as he or she is participating in the work-study program.

<sup>3</sup> If placed on LWOP under the provisions of the Intergovernmental Personnel Act or to serve as a full-time officer or employee of a union, the employee can continue to contribute to his/her TSP account (Public Law 100-238)

<sup>4</sup> For specific information, contact your servicing personnel office.